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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,969	10/31/2003	Dimiter S. Zagoroff	3567.1001-000	8813
21005	7590	03/22/2005	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133				PEDDER, DENNIS H
ART UNIT		PAPER NUMBER		
		3612		

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/698,969	Zagoroff, Dimiter S.
	Examiner Dennis H. Pedder	Art Unit 3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 November 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4-6,9,10,12-14 and 17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) as above is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 November 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: _____                                     |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 2, 4-6, 9-10, 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague in reciting a spring with lost motion without any frame of reference for lost motion with respect to: what structure for the torsion bar embodiment? The claims are further vague in that the lost motion of the coil spring embodiment is not in the spring, but in a linkage mechanism connected thereto.

Claim 2, 10 recite a negative limitation “without interfering”.

Claim 14 is functional lacking means or structure for the function.

3. The incomplete statement of incorporation by reference on page 1 of the specification is deemed to be completed by the statements of pages 4 and 6.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of McLaughlin, Dorrell, and Renke in view of common knowledge in the art.

All three references detail means for arresting the tailgate in a partially open position. All three means are simpler than disclosed by applicant and can be added as an aftermarket device as well, and therefore are obvious to use for that reason. "Means for actuating latches, whether tailgate or door, are of common knowledge in the art and are embodied by simple solenoid devices, an electro-mechanical actuator, or a simple manual latch, both again simpler than applicant's motor and linkage assembly. Use of the commonly known solenoid actuators or manual latch is therefore an obvious expedient to one of ordinary skill in the art as a cost saving device. It would have been obvious to one of ordinary skill to provide in any of the above references a solenoid actuator or manual latch to unlatch the tailgate in order to reduce effort of opening or to simply open the tailgate.

Applicant may seasonably challenge, for the official record in this application, this and any other statement of judicial notice in timely manner in response to this office action. Please specify the exact statement to be challenged. Applicant is reminded, with respect to the specific challenge put forth, of the duty of disclosure under Rule 56 to disclose material which is pertinent to patentability including claim rejections challenged by applicant.

***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 2, 4, 5, 6, 9-10, 12, 13, 14, 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 6,857,679. Although the conflicting claims are not identical, they are not patentably distinct from each other because the use of an electrical solenoid to open latch structures is of common knowledge in this art. The pre-tensioned spring, torsion rod, spiral spring linkage and lost motion to arrest the tailgate are all disclosed and claimed in the prior patent.

As to claim 2 and 6, manual operation of a latch in conjunction with a solenoid activation and closure ajar warning lights are all common knowledge in this art.

As to claim 17, manual means to open a tailgate are also common knowledge in this art as disclosed by applicant himself at 20 in figure 1 of the patent. It would have been obvious to one of ordinary skill to provide a manual latch as admitted by applicant in order to save the expense of an electrical solenoid.

8. Claims 1, 2, 4-6, 9-10, 12-14, 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of U.S. Patent No. 6,832,801. Although the conflicting claims are not identical, they are not patentably distinct from each other because the use of an electrical solenoid to open latch structures is of common knowledge in this art. The pre-tensioned spring, torsion rod, spiral spring linkage and lost motion to arrest the tailgate are all disclosed and claimed in the prior patent.

As to claim 2 and 6, manual operation of a latch in conjunction with a solenoid activation and closure ajar warning lights are all common knowledge in this art.

As to claim 17, manual means to open a tailgate are also common knowledge in this art as disclosed by applicant himself at 20 in figure 1 of the patent. It would have been obvious to one of ordinary skill to provide a manual latch as admitted by applicant in order to save the expense of an electrical solenoid.

*Specification*

9. The disclosure is objected to because of the following informalities: The dates of the priority documents on page 1 are incorrect.

In addition, it is not acceptable to list a reference numeral and state it is not shown (numeral 10, pages 4 and 5).

Appropriate correction is required.

*Response to Arguments*

10. Applicant's arguments with respect to claims of record have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (703) 308-2178. The examiner can normally be reached on 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dennis H. Pedder  
Primary Examiner  
Art Unit 3612

2/23/05

DHP  
2/23/2005



Application No.: 10/698,969  
Title: Method and Apparatus for Remote...  
Inventor: Dimiter S. Zagoroff  
Replacement Sheet

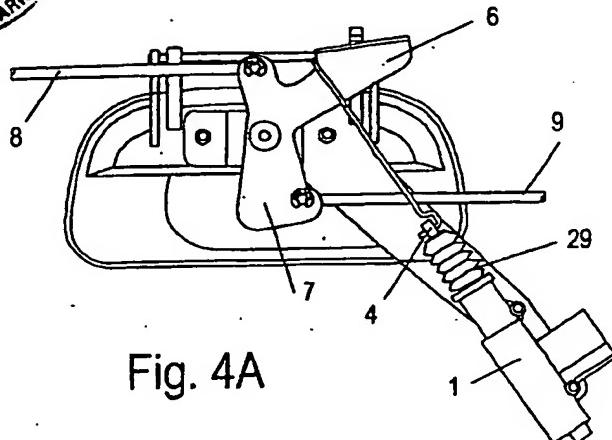


Fig. 4A

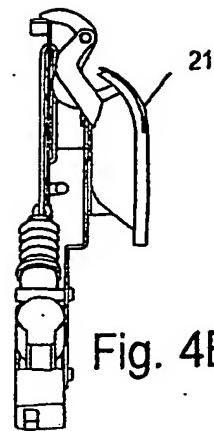


Fig. 4B

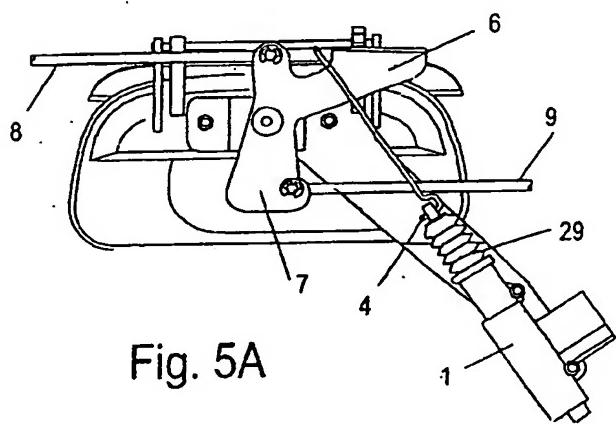


Fig. 5A

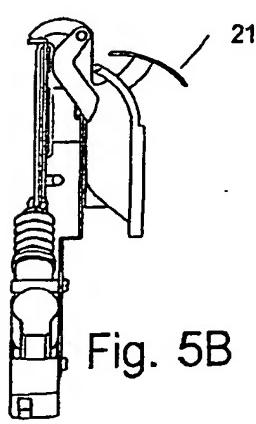


Fig. 5B

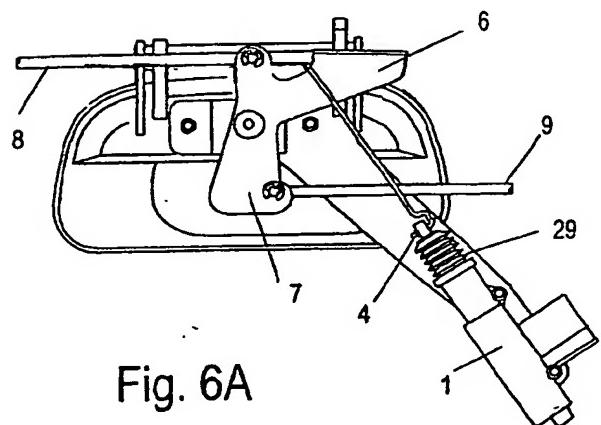


Fig. 6A

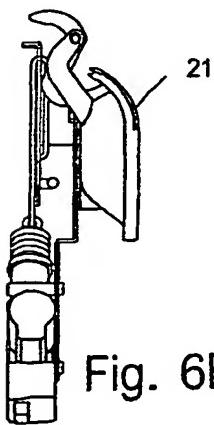


Fig. 6B

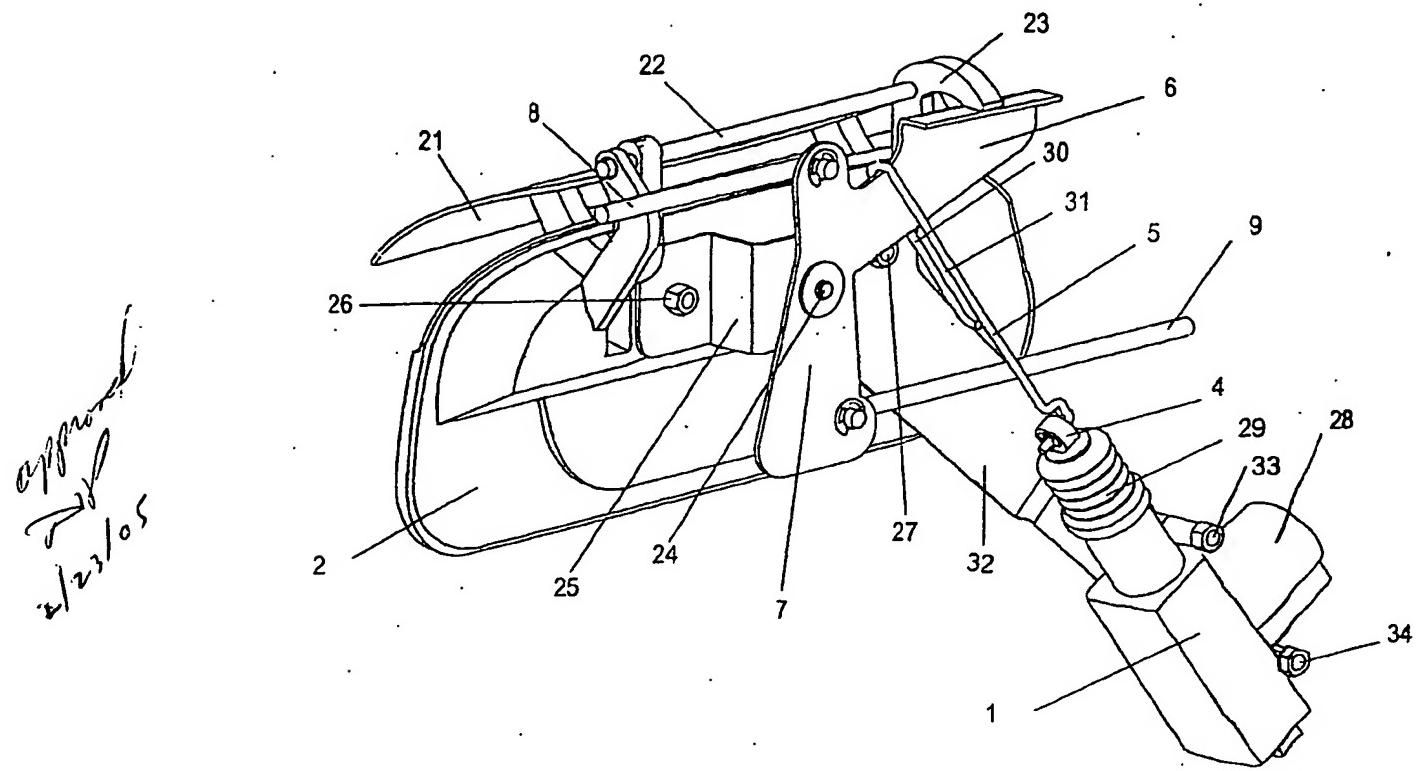


Fig. 3